

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
Charlottesville Division**

**RESPONSE IN PARTIAL OPPOSITION TO PLAINTIFF'S "MOTION FOR ONE
WEEK EXTENSION OF DEADLINE TO AMEND COMPLAINT"**

In his motion for an extension of time to amend his complaint, Plaintiff “seeks a one-week extension—until June 10, 2021—of the deadline for amending his complaint set forth in the Pretrial Order.” Dkt. No. 147; *see* Dkt. No. 139, ¶ 24. Defendants oppose the requested relief to the extent it presupposes that Plaintiff has leave to amend his complaint when the Court has not yet granted such leave, nor has Plaintiff requested such leave by motion, as he is required to do.

Paragraph 24 of the Pretrial Order addresses the amendment of pleadings and states the following:

The court shall consider a party's motion to amend pleadings in accordance with Rule 15 of the Federal Rules of Civil Procedure. Except for good cause shown, any such motion must be filed no later than 45 days from the date of this order.

Dkt. No. 139, ¶ 24. On its face, Paragraph 24 requires any party seeking to amend a pleading to file a motion for leave to amend in accordance with Federal Rule 15 and does not, as Plaintiff suggests, allow a party to amend a pleading at-will without first seeking and obtaining leave of

court. Indeed, under Federal Rule 15, a court should not grant leave to amend a pleading unless a party demonstrates by motion that justice requires it. See Fed. R. Civ. P. 15(a)(2).

Because the Court has not granted Plaintiff leave to amend the Complaint, the relief sought in Plaintiff's Motion and proposed Order is improper and premature. *See* Dkt. Nos. 147, 147-1. Therefore, to the extent the Court is persuaded to grant Plaintiff a one-week extension of the June 3, 2021 deadline contained in Paragraph 24 of the Pretrial Order, the appropriate relief is merely an additional week to file a motion for leave to amend before having to show good cause for the late-filed motion. *See* Dkt. No. 139, ¶ 24. Defendants do not oppose relief in that form.

Respectfully submitted,

/s/ Madeline M. Gibson

MARK R. HERRING
Attorney General of Virginia

SAMUEL T. TOWELL
Deputy Attorney General

MARSHALL H. ROSS
Senior Assistant Attorney General/
Trial Section Chief

Madeline M. Gibson (VSB No. 87561)
Calvin C. Brown (VSB No. 93192)
Assistant Attorneys General
Office of the Virginia Attorney General
202 North 9th Street
Richmond, Virginia 23219
Telephone: (804) 692-0551
Facsimile: (804) 371-2087
mgibson@oag.state.va.us

Counsel for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of June, 2021, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will deliver a notice of electronic filing to all counsel of record in this case.

/s/ Madeline M. Gibson

Madeline M. Gibson (VSB No. 87561)
Assistant Attorney General
Office of the Virginia Attorney General
202 North 9th Street
Richmond, Virginia 23219
Telephone: (804) 692-0551
Facsimile: (804) 371-2087
Email: mgibson@oag.state.va.us

Counsel for Defendants